

KEYWORDS: claim; equalization pay; timeliness

DIGEST: Under Department of Defense Instruction 1340.21 (Instruction), ¶ E7.13, the Defense Office of Hearings and Appeals (DOHA) must receive a request for reconsideration within 30 days of the appeal decision, plus an additional 30 days for good cause shown. The Board cannot consider the substance of any request for reconsideration unless the claimant demonstrates, or the record otherwise contains, clear and convincing evidence of such good cause.

CASENO: 07121104

DATE: 12/14/2007

DATE: December 14, 2007

_____)	
In Re:)	
[REDACTED])	Claims Case No. 07121104
Claimant)	
_____)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Under Department of Defense Instruction 1340.21 (Instruction), ¶ E7.13, the Defense Office of Hearings and Appeals (DOHA) must receive a request for reconsideration within 30 days of the appeal decision, plus an additional 30 days for good cause shown. The Board cannot consider the substance of any request for reconsideration unless the claimant demonstrates, or the record otherwise contains, clear and convincing evidence of such good cause.

DECISION

The claimant, a former member of a recognized Philippine guerilla unit during World War II, requests reconsideration of the November 5, 2007, appeal decision of the Defense Office

of Hearings and Appeals (DOHA) in DOHA Claim No. 07071201. In the appeal decision, DOHA's adjudicators denied the claimant's request for "equalization pay." They explained to the claimant that since the end of World War II, legislation has been introduced from time to time in the United States Congress to authorize retroactive equal pay for Philippine veterans of the war. This is commonly referred to as "equalization pay." However, despite the widespread belief in the Philippines that such legislation had been enacted, no legislation for equalization pay has ever been enacted into law.¹ Accordingly, our adjudicators disallowed the claim. Our adjudicators also advised the claimant that under DoD Instruction 1340.21, ¶ E7.13,² DOHA may accept a request for reconsideration from him, but that such a request had to be received by DOHA within 30 days from the date of the November 5, 2007, decision. DOHA received the claimant's request for reconsideration on December 11, 2007.

In his reconsideration request, the claimant indicates that he has already provided all of the information necessary to support his claim for equalization pay.

Discussion

The claimant's request for reconsideration is untimely. While the 30-day receipt requirement may be extended an additional 30 days for good cause, the claimant failed to demonstrate good cause. Accordingly, the Board cannot consider it further. However, even if the claimant had been timely, in his reconsideration request the claimant simply relied on what he had previously submitted, and it is unlikely that the claimant could have proved by clear and convincing evidence that he was entitled by law to the benefits claimed. *See* DoD Instruction 1340.21, ¶E5.7, which requires clear and convincing evidence on the written record that the United States Department of Defense is liable under the law for the amount claimed with all relevant evidence presented when the claim is first submitted.³

Conclusion

The Board has no authority to reconsider the November 5, 2007, appeal decision. In accordance with DoD Instruction 1340.21, ¶ E7.11,⁴ DOHA's November 5, 2007, appeal decision in DOHA Claim No. 07071201 is the final administrative action of the Department of Defense in this matter.

¹Our research identified a web site of the Philippine Veterans Affairs Office which contained the following comment on the subject: "4. Equalization of wartime pay for Commonwealth Army and recognized Guerilla Veterans at par with rates of pay given to officers and enlisted men of the United States Armed Forces is not sanctioned by the U.S. Government." *See* <http://server.pvao.mil.ph/faq.html> current as of December 12, 2007.

²This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (m).

³ This provision is also codified at 32 C.F.R. Part 282, Appendix C, paragraph (g).

⁴This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (k).

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board